

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

RICHARD LOPEZ,

Petitioner,

vs.

GAIL LEWIS, Warden,

Respondent.

Case No. 2:03-cv-1027-JKS-EFB-P

ORDER

Richard Lopez, a California state prisoner, seeks post-conviction relief from his California State Conviction. *See* 28 U.S.C. § 2254. This Court adopted findings of fact and a recommendation of a Magistrate Judge and dismissed the petition. The Court considered and denied a certificate of appealability, concluding that none of Lopez's claims presented a debatable issue of constitutional law. Docket No. 28. Lopez has now filed what he terms a "Petition for Review and Reconsideration of Ruling by District Court Judge." The clerk in the belief that this was a motion for new trial or to alter or amend a judgment filed it. *See* Fed. R. Civ. P. 59. While filed in this Court, it appears clear that it is not a Rule 59 motion. Lopez is attempting to appeal to the Ninth Circuit, not seek reconsideration in this court. In order to do so, he must petition a motion panel of the Ninth Circuit for a certificate of appealability. *See* 28 U.S.C. § 2253(c). That appears to be what Lopez is trying to do. His Petition should therefore be forwarded to the Ninth Circuit.

On the assumption that this Court is in error and Lopez is moving for new trial or to alter or amend the judgment, the Court is of the view that all of Lopez's arguments have been

adequately answered by the Magistrate Judge in a recommendation which this Court in the exercise of its independent judgment and after a *de novo* review of the record adopted. Any Rule 59 motion would therefore be denied.

Since there is no reason to grant a certificate of appealability as to the judgment, the Court sees no reason to grant a certificate of appealability as to any subsidiary issue.

IT IS SO ORDERED.

Dated at Anchorage, Alaska, this 15th day of October 2007.

/s/James K. Singleton, Jr.
JAMES K. SINGLETON, JR.
United States District Judge